



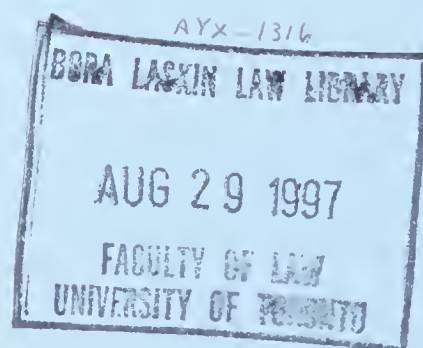
# **CHILDREN AND THE LAW**

**1997/98**

**Volume I**

***R. Bessner***

119  
Q60  
997a  
11  
11



# CHILDREN AND THE LAW

1997/98

Volume I

*R. Bessner*



Digitized by the Internet Archive  
in 2018 with funding from  
University of Toronto

[https://archive.org/details/childrenlaw01bess\\_3](https://archive.org/details/childrenlaw01bess_3)

## **NOTICE**

**These materials are not to be considered as published. They are  
for the sole educational use of students at the Faculty of Law,  
University of Toronto.**



# CHILDREN AND THE LAW

## Table of Contents

### Volume I

|    |                                                                        |     |
|----|------------------------------------------------------------------------|-----|
| 1. | Children's Rights                                                      | 1   |
| 2. | Child Witnesses                                                        |     |
|    | a) Psychological Studies on the Reliability of<br>Children's Testimony | 93  |
|    | b) Competency Rules for Children                                       | 125 |
|    | c) Corroboration Requirement for Children's Testimony                  | 190 |
|    | d) Applicability of the Hearsay Rule to the Statements<br>of Children  | 207 |
|    | e) Accommodation of The Child Witness                                  | 259 |
| 3. | The Legal Representation of Children                                   | 368 |
| 4. | Child Abuse                                                            | 446 |
|    | a) The Duty to Report                                                  | 472 |
|    | b) Statute of Limitations                                              | 500 |

### Volume II

|     |                                       |     |
|-----|---------------------------------------|-----|
| 5.  | State Intervention in Pregnancies     | 1   |
| 6.  | Child Pornography                     | 91  |
| 7.  | Medical Treatment of Children         | 224 |
| 8.  | Non-therapeutic Treatment of Children | 275 |
| 9.  | Education                             | 375 |
| 10. | Young Offenders                       | 425 |
| 11. | United Nations                        | 511 |



# CHILDREN AND THE LAW

## Volume I

### 1. Children's Rights

#### Introduction

- a) M.S. Wald, "Children's Rights: A Framework For Analysis" in *Children's Rights In The Practice of Family Law: A Framework for Analysis*, edited by B. Landau (Carswell) (1986) . . . . . 1
- b) K.A. Hughes and H.T.G. Andrews, "Children's and Family Rights and the Role of the State in Custody and Child Protection Matters" in *Justice Beyond Orwell*, edited by R.S. Abella and M.L. Rothman (Les Éditions Yvon Blais Inc.) (1985) . . . . . 25
- c) M.D.A. Freeman, "Children's Rights: The evolution of a concept" in *The Rights and Wrongs of Children*, (London: Francis Pinter) (1983) . . . . . 43
- d) B.C. Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their "Rights"*, (1976) B.Y.U.L. Rev. 605 . . . . . 56
- e) C.D. Gill, "Essay on the Status of the American Child, 2000 A.D.: Chattel or Constitutionally Protected Child-Citizen?" (1991) 17 Ohio Northern Law Rev. 543 . . . . . 61
- f) J. Wilson, "Defining Children's Rights," (1994) 38 The Law Soc. of Upper Can. Gaz. 50 . . . . . 80
- g) C. Lasch, "Hillary Clinton, Child Saver: What she values will not help the family," *Harper's Magazine*, October 1992 . . . . . 85
- h) S. Fine, "Children Start to Flex Legal Muscles in Canada," *The Toronto Globe and Mail*, April 22, 1993 . . . . . 91

### 2. The Child Witness

#### (1) Psychological Studies on The Reliability of Children's Testimony

- a) G. Goodman and V. Helgeson, "Child Sexual Assault: Children's Memory and The Law," (1988) 12 Provincial Judges Journal 17 . . . . . 93

|                                                                                                                                                                   |     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| b) R.K. Oates, "Children as Witnesses," (1990) 64 Australian L.J. 129 . . . . .                                                                                   | 105 |
| c) M. Mian, K. Haka-Ikse, M. Lefkowitz, and C. McGoey, "The Child as Witness," (1991) 4 C.R. (4th) 359 . . . . .                                                  | 111 |
| d) J. Spencer and R. Flin, "Child Witnesses - Are They Liars?" (1989) 139 New L.J. 1601 . . . . .                                                                 | 119 |
| e) D. Jones and R. Krugman, "Can A Three-Year-Old Child Bear Witness to Her Sexual Assault and Attempted Murder?" (1986) 10 Child Abuse and Neglect 253 . . . . . | 121 |

(2) Competency Rules for Child Witnesses

*Ontario Evidence Act*, R.S.O. 1995, s. 18.  
*Canada Evidence Act*, R.S.C. 1985, s. 16.

|                                                                                                                  |     |
|------------------------------------------------------------------------------------------------------------------|-----|
| a) <i>R. v. Bannerman</i> (1966), 48 C.R. 110 (Man. C.A.) . . . . .                                              | 125 |
| b) <i>R. v. Budin</i> (1981), 58 C.C.C. (2d) 352 (Ont. C.A.) . . . . .                                           | 139 |
| c) <i>R. v. Fletcher</i> (1982), 1 C.C.C. (3d) 370 (Ont. C.A.) . . . . .                                         | 144 |
| d) <i>Khan v. The Queen</i> (1991), 79 C.R. (3d) 1 (S.C.C.) . . . . .                                            | 152 |
| e) <i>R. v. Marquard</i> (1993), 25 C.R. (4th) 1 (S.C.C.) . . . . .                                              | 160 |
| f) A. Peter Nasmith, "High Time for One Secular 'Oath'," (1990) 24 The Law Soc. of Upper Can. Gaz. 230 . . . . . | 180 |

(3) The Corroboration Requirement for Children's Testimony

*Ontario Evidence Act*, R.S.O. 1990, s. 18(2)

|                                                                                                                                                                                                                             |     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| a) <i>R. v. Kendall</i> (1962), 132 C.C.C. 216 (S.C.C.) . . . . .                                                                                                                                                           | 190 |
| b) <i>R. v. R.W.</i> (1992), 13 C.R. (4th) 257 (S.C.C.) . . . . .                                                                                                                                                           | 194 |
| c) N. Bala, "Children as Witnesses in Sexual Abuse Cases: Statutory Reforms" - Excerpt in 1991 Canadian Bar Association Seminar on <i>Sexual Abuse of Children: Criminal &amp; Family Law Proceedings</i> , 19-25 . . . . . | 201 |

(4) The Applicability of The Hearsay Rule to the Statements of Children

- a) *Khan v. The Queen* (1991), 79 C.R. (3d) 1 (S.C.C.) . . . . . (152)
- b) J. Spencer and R. Flin, "A Critical Look at the Hearsay Rule Concerning Children's Evidence" in *The Evidence of Children: The Law and The Psychology*, (Blackstone Press) (1990) 135-178 . . . . . 207
- c) D.A. Rollie Thompson, "Taking Children and Facts Seriously: Evidence Law in Child Protection Proceedings - Part I," (1988) 7 Can. J. of Fam. L. 11 . . . . . 224

(5) Accommodation of the Child Witness

*Criminal Code*, R.S.C. 1985, c. C-46, s.715.1 and 1993, c.45, s.486

- a) J. Spencer and R. Flin, "The Case for Change" in *The Evidence of Children: The Law and The Psychology*, (Blackstone Press) (1990) 282-305 . . . . . 259
- b) G. Davies and H. Westcott, "The Child Witness in the Courtroom: Empowerment or Protection?" in *Memory and Testimony in the Child Witness*, Maria S. Zaragoza et al. (eds.) (California: Sage Publications, Inc.) (1995) 199-213 . . . . . 272
- c) C.F. Graham, "Sequestration Screens for Young Complainants in Criminal Prosecutions: Early Developments in Canada," (1990) 32 Crim. L. Q. 227 . . . . . 280
- d) *R. v. Levogiannis* (1993), 25 C.R. (4th) 325 (S.C.C.) . . . . . 294
- e) *R. v. Paul M.* (1990), 1 O.R. (3d) 341 (Ont. C.A.) . . . . . 303
- f) *R. v. L.* (1993), 25 C.R. (4th) 285 (S.C.C.) . . . . . 309
- g) A. E. Tobey et al, "Balancing the Rights of Children and Defendants: Effects of Closed-Circuit Television on Children's Accuracy and Jurors' Perceptions" in *Memory and Testimony in the Child Witness*, Maria S. Zaragoza et al. (eds.) (California: Sage Publications, Inc.) (1995) 214-239 . . . . . 330
- h) *Maryland v. Craig* (1990), 58 L.W. 5044 (U.S. Sup. Ct.) . . . . . 343
- i) V. Paisley, "Testimony by The Child Witness in Criminal Court: Tactical and Ethical Issues in Examining and Cross-Examining a Child Complainant" (1988) . . . . . 353

- j) Ontario Medical Association Committee on Child Welfare, "The Child in Court: Some Changes Needed" (1987) . . . . . 365

### 3. The Legal Representation of Children

- a) S. Himel, "Representing Children" in *Canadian Child Welfare: Children, Families and the State*, N. Bala, J. Hornick, R. Vogl (eds.) (Thompson Educ. Pub.) (1991) 196-206 . . . . . 368
- b) M. Peterson-Badali and R. Abramovitch, "Children's Knowledge of the Legal System: Are They Competent to Instruct Legal Counsel?" (1992) *Can. J. of Crim.* 139 . . . . . 379
- c) J.C. Pearson, "Legal Representation Under The Young Offenders Act" in *The Young Offenders Act: A Revolution in Canadian Juvenile Justice*, A. Leschied, P. Jaffe and W. Willis (eds.), (1991) 114-127 . . . . . 391
- d) J.W. Eayrs, "Some Problems of Professional Ethics in the Legal Representation of Minors," (1986) 20 *Gazette* 106 . . . . . 398
- e) *Re W.* (1980), 27 O.R. (2d) 314 (Ont. Prov. Ct. Fam. Div.) . . . . . 400
- f) *Re C.* (1980), 14 R.F.L. (2d) 21 (Ont. Prov. Ct. Fam. Div.) . . . . . 403
- g) *Re Reid and Reid* (1975), 11 O.R. (2d) 622 (Ont. Div. Ct.) . . . . . 410
- h) *Lauro v. Lauro* (1988), 13 R.F.L. (3d) 189 (Ont. Dist. Ct.) . . . . . 417
- i) *Catholic Children's Aid Society of Metropolitan Toronto v. C.M. and D.L.* (1991), 35 R.F.L. (3d) 1 (Ont. Ct. Prov. Div.) . . . . . 420
- Official Guardian v. M.(S.)* (1991) 35 R.F.L. (3d) 297 . . . . . 434
- j) *Strobridge v. Strobridge* (1994), 18 O.R. (3d) 753 (Ont. C.A.) . . . . . 438

### 4. Child Abuse

#### (1) General

- a) M.D.A. Freeman, "Children Who Are Wronged: The Problem of Abuse and Neglect" in *The Rights and Wrongs of Children*, (London: Francis Pinter) (1983) at 104 . . . . . 446

|                                                                                                                                                                                                  |     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| b) E. Elmer, <i>Fragile Families, Troubled Children</i> , (Univ. of Pittsburgh Press) (1977) at 108                                                                                              | 458 |
| c) N. Polansky, M.A. Chalmers, E. Bittenwieser and D. Williams in <i>Damaged Parents: An Anatomy of Child Neglect</i> (1981) at 1                                                                | 462 |
| (2) <u>The Duty to Report</u>                                                                                                                                                                    |     |
| a) <i>Child &amp; Family Services Act</i> , R.S.O. 1990, c. C-11, s.72                                                                                                                           | 472 |
| b) R. Vogl, "Initial Involvement" in <i>Canadian Child Welfare Law: Children, Families and The State</i> , N. Bala, J. Hornick & R. Vogl (eds.), (Thompson Educ. Pub.) (1991) 33-35              | 473 |
| c) <i>R. v. Cook</i> (1985), 46 R.F.L. (2d) 174 (Ont. C.A.)                                                                                                                                      | 475 |
| d) <i>R. v. Stachula</i> (1984), 40 R.F.L. (2d) 184 (Ont. Fam. Ct.)                                                                                                                              | 480 |
| e) M. Bailey, "The Failure of Physicians to Report Child Abuse," (1982) 40 Univ. of Tor. Law Rev. 49                                                                                             | 485 |
| f) F.S. Berlin, "Effects of Statutes Requiring Psychiatrists to Report Suspected Sexual Abuse of Children," (1991) 148 Amer. J. Psychiatry 449                                                   | 495 |
| (3) <u>Limitation Periods</u>                                                                                                                                                                    |     |
| a) N. Des Rosiers, "Limitation Periods and Civil Remedies for Childhood Sexual Abuse," (1992) 9 C.F.L.Q. 43                                                                                      | 500 |
| b) <i>M. (K.) v. M. (H.)</i> (1992), 96 D.L.R. (4th) 289 (S.C.C.)                                                                                                                                | 516 |
| c) S. Fine, "Ruling on incest case hailed as possible deterrent," <i>The Toronto Globe and Mail</i> , October 30, 1992                                                                           | 543 |
| d) N. Clevenger, "Statute of Limitations: Childhood Victims of Sexual Abuse Bringing Civil Actions Against Their Perpetrators after Attaining Age of Majority," (1991-1992) 30 J. of Fam. L. 447 | 544 |

---

